

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK E. SUNNERGREN,  
Plaintiff,

v.

DARRIN BRIGHT, et al.,  
Defendants.

Case No. 22-cv-00746 BLF (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Mr. Mark E. Sunnergren, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 regarding deficient medical care at Salinas Valley State Prison (“SVSP”). Dkt. No. 1. The Court dismissed the complaint with leave to amend, to correct deficiencies in his attempt to state an Eighth Amendment claim. Dkt. No. 22. Plaintiff filed a first amended complaint (“FAC”). Dkt. No. 24.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any

cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

#### **B. Plaintiff's Claims**

In the FAC, Plaintiff names the following as Defendants: (1) Darrin Bright, Chief Physician and Surgeon at SVSP; (2) Kim Kumar, Chief Medical Executive; (3) Chief Executive Officer (CEO) – “Cantu”; (4) “Gates,” the Chief of California Correctional Health Care Services (“CCHCS”) at Sacramento and Headquarters Level appeal responses; and (8) Doe Defendants. Dkt. No. 24 at ¶¶ 8-12.

Plaintiff’s statement of facts begins with the general allegation that “Defendant’s practices, acts, omissions, policies and/or regulations or underground policies...have caused Plaintiff to be injured, wrongfully denied adequate medical care, slandered, and retaliated against.” *Id.* at ¶ 15. Plaintiff claims such acts were done with deliberate indifference to his serious medical needs and in retaliation for filing grievances. *Id.* Plaintiff claims Defendant acted without due process of law and in violation of State and Federal laws. *Id.* As relief, Plaintiff seeks damages, including punitive damages, as well as injunctive and declaratory relief. *Id.* at ¶ 35.

Plaintiff claims he has been treated for seizures and nerve pain with an anti-convulsant drug, Gabapentin. *Id.* at ¶ 17. In 2012, Plaintiff had an argument with Defendant Bright, who was the “ADA Doctor for SVSP at the time.” *Id.* at ¶ 18. In 2014, Defendant Bright was promoted to “CP&S.” *Id.* at ¶ 19. When Plaintiff’s annual renewal for Gabapentin came up, Plaintiff claims Defendant Bright discontinued it “with evil

1 intent.” *Id.* Defendant CME Kumar and Dr. Salmi overrode Defendant Bright’s decision,  
 2 and restored the Gabapentin. *Id.* at ¶ 20. Defendant Bright was transferred to another  
 3 facility for a time, but when he later returned to SVSP, he retaliated against Plaintiff by  
 4 stopping his Gabapentin. *Id.* at ¶ 21. He did so again in 2019. *Id.* at ¶ 22. Plaintiff claims  
 5 that as a result of Defendant Bright’s retaliatory acts, he suffered several seizures, hitting  
 6 his head and injuring his neck, back, and possibly a brain injury. *Id.* at ¶ 23. He also  
 7 suffers from vertigo, panic attacks, anxiety, and migraine headaches, due to that head  
 8 injury. *Id.* at ¶ 24. Plaintiff claims that in 2019, Defendant Kumar assured him that  
 9 Defendant Bright “would no longer be in charge of authorizing or taking away medications  
 10 that were being prescribed by yard doctors.” *Id.* at ¶ 26. Plaintiff claims that this stopped  
 11 Defendant Bright’s “reign of terror” but the retaliation continued “with several incidents of  
 12 discrimination by SVSP medical staff and Doe Defendants.” *Id.* For example, Plaintiff  
 13 complained for months about severe pain in his back, and Defendant Bright would refuse  
 14 an MRI. *Id.* at ¶ 31. Eventually, an MRI at a hospital showed “severe disease all  
 15 throughout his spine.” *Id.*

16       Liberally construed, Plaintiff is attempting to state an Eighth Amendment claim  
 17 based on deliberate indifference to serious medical needs. Deliberate indifference to  
 18 serious medical needs violates the Eighth Amendment’s proscription against cruel and  
 19 unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974  
 20 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v.*  
 21 *Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (*en banc*). A determination of a “deliberate  
 22 indifference” claim involves an examination of two elements: the seriousness of the  
 23 prisoner’s medical need and the nature of the defendant’s response to that need. *Id.* at  
 24 1059. A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
 25 substantial risk of serious harm and disregards that risk by failing to take reasonable steps  
 26 to abate it. *Farmer* at 837. The prison official must not only “be aware of facts from  
 27 which the inference could be drawn that a substantial risk of serious harm exists,” but  
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1 “must also draw the inference.” *Id.* If a prison official should have been aware of the risk,  
2 but did not actually know, the official has not violated the Eighth Amendment, no matter  
3 how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002).

4 Assuming Plaintiff’s alleged medical conditions amount to a serious medical need,  
5 the FAC contains sufficient allegations to support an Eighth Amendment claim against  
6 Defendant Bright. However, there are insufficient facts to support an Eighth Amendment  
7 claim against any of the other named Defendants. For example, the allegations involving  
8 Defendant Kumar do not indicate that this defendant acted with deliberate indifference to  
9 Plaintiff’s medical needs. Rather, Defendant Kumar assured Plaintiff at one point that  
10 Defendant Bright would no longer be interfering with prescriptions issued by yard doctors,  
11 which does not indicate a failure to take reasonable steps to abate a substantial risk of  
12 serious harm. *See supra* at 3. Furthermore, nowhere in his statement of facts does  
13 Plaintiff even mention Defendants “Cantu” or “Gates,” or make specific factual allegations  
14 against them. Lastly, Plaintiff also refers to other Defendants who allegedly were  
15 “cronies” of Defendant Bright and were involved in a “pattern of abuse.” Dkt. No. 24 at  
16 ¶¶ 28, 29. However, there are no specific factual allegations explaining their involvement  
17 in Plaintiff’s medical treatment which would amount to deliberate indifference.

18 Secondly, Plaintiff’s allegations, liberally construed, are sufficient to state a  
19 retaliation claim against Defendant Bright for his adverse actions against Plaintiff for filing  
20 medical grievances which chilled his First Amendment rights. *See Rhodes v. Robinson*,  
21 408 F.3d 559, 567-68 (9th Cir. 2005). However, the allegations are again deficient to  
22 support a retaliation claim against any other named Defendant.

23 Lastly, Plaintiff asserts that his right to due process was violated and that  
24 Defendant’s actions violated “State and Federal laws.” *See supra* at 2. However,  
25 Plaintiff’s allegations do not implicate his due process rights as there is no indication that  
26 he was deprived of a liberty interest which was procedurally protected. *See Sandin*  
27 *Conner*, 515 U.S. 472, 484 (1995). Nor will the Court liberally construe the FAC as  
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1 stating a violation of state laws in general. Plaintiff must specifically identify the relevant  
2 state law such that the Court can determine whether supplemental jurisdiction is  
3 appropriate under 28 U.S.C. § 1367.

4 Plaintiff shall be granted one more opportunity to file a second amended complaint  
5 that sets forth sufficient facts to state a § 1983 claim against each named Defendant.  
6 Plaintiff is again reminded to focus on more recent actions by Defendants that amount to  
7 deliberate indifference to his serious medical needs to ensure his claims are timely under  
8 California law. In California, the general residual statute of limitations for personal injury  
9 actions is the two-year period set forth at California Civil Procedure Code § 335.1 and is  
10 the applicable statute in § 1983 actions.<sup>1</sup>

11 In the alternative, Plaintiff may opt to strike all other defendants and claims from  
12 the FAC and proceed solely on the cognizable claims against Defendant Bright.

### 13 14 CONCLUSION

15 For the foregoing reasons, the Court orders as follows:

16 1. The complaint is **DISMISSED with leave to amend**. Within **twenty-eight**  
17 **(28) days** of the date this order is filed, Plaintiff shall file a second amended complaint to  
18 correct the deficiencies described above. The second amended complaint must include the  
19 caption and civil case number used in this order, Case No. 22-cv-00746 BLF (PR), and the  
20 words "SECOND AMENDED COMPLAINT" on the first page. If using the court form  
21 complaint, Plaintiff must answer all the questions on the form in order for the action to  
22 proceed. The second amended complaint supersedes the original and FAC, these being  
23 treated thereafter as non-existent. *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002,

24  
25 <sup>1</sup> California Civil Procedure Code section 352.1 recognizes imprisonment as a disability  
26 that tolls the statute of limitations when a person is "imprisoned on a criminal charge, or in  
27 execution under the sentence of a criminal court for a term of less than for life." Cal. Civ.  
28 Proc. Code § 352.1(a). The tolling is not indefinite, however; the disability of  
imprisonment delays the accrual of the cause of action for a maximum of two years. *See*  
*id.*


1 1008 (9th Cir. 2015). Consequently, claims not included in the second amended complaint  
 2 are no longer claims and defendants not named are no longer defendants. *See Ferdik v.*  
 3 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

4 2. **Failure to respond in accordance with this order in the time provided**  
 5 **will result in the dismissal with prejudice of the claims against all other defendants,**  
 6 **except for Defendant Bright, for failure to state a claim without further notice to**  
 7 **Plaintiff. This action will then proceed solely against Defendant Bright on the Eighth**  
 8 **Amendment and retaliation claims against him.**

9 3. The Clerk shall include two copies of the court's complaint with a copy of  
 10 this order to Plaintiff.

11 **IT IS SO ORDERED.**

12 **Dated: \_\_January 3, 2023\_\_**

  
 13 BETH LABSON FREEMAN  
 14 United States District Judge  
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25 Order of Dism. With Leave to Amend  
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